

REMARKS

Claim 12 is rejected under 35 U.S.C. § 112, second paragraph. Claims 1 and 3-9 are rejected under 35 U.S.C. § 102(e). Claims 2, 10-12, 13 and 14-20 are rejected under 35 U.S.C. § 103(a).

By this amendment, claims 1, 5, 10, 12 and 16 have been amended and claims 3, 4, 14 and 15 are cancelled without prejudice and disclaimer to the subject matter therein. Support for the amendments is found on page 6, lines 6-17 (claim 1, 5, 10 and 16) and page 10, lines 1-8 (claim 12). Therefore, Applicant believes no new matter is added by these amendments. Accordingly, Applicant respectfully requests entry of the amendments.

Claims 1, 2, 5-13 and 16-20 remain pending in the application. Applicant respectfully requests reconsideration and allowance of each pending claim in view of the following remarks.

Rejection under 35 U.S.C. § 112, Second Paragraph

Claim 12 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner asserts that although "claim 12 discloses in lines 2-3 'per gram of fibrous material in the absorbent core' . . . [n]o fibrous material has been previously disclosed . . ."

Claim 12 has been amended to replace the term "fibrous material" with the term "fluff pulp." Support for this amendment is provided on page 10, lines 1-8 of the specification and therefore it adds no new matter to the application. Applicants respectfully submit that the amendment overcomes the rejection.

Rejection under 35 U.S.C. § 102(e)

Claims 1 and 3-9 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,150,469 to Harada et al. Specifically, the Examiner asserts that Harada discloses a superabsorbent composition comprising an underneutralized superabsorbent polymer, an anionic clay and the ratios recited in the claims. Office Action, page 3. Although Applicant believes the claims are not anticipated because Harada does not disclose each and every element of the claim, and in particular the polymer and ratios of the present invention, Applicant has nonetheless amended the claims to further the prosecution of this case.

In particular, amended claims 1 and 10 distinguish the polymer of the present invention over the prior art by reciting that “*less than* 50% of the functional groups of the polymer are sodium neutralized.” In contrast, Harada discloses that 50 mol%-90 mol % of acidic groups in the crosslinked polyacrylic acid/salt are neutralized. See col. 6, lines 50-53.

Anticipation requires that “each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (*quoting Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed. Cir. 1987)). Here, Harada not only fails to disclose the specifically recited polymer of the presently claimed invention in which less than 50% of the functional groups of the polymer are sodium neutralized, but instead teaches a polymer in which more than 50% of the functional group are neutralized. Therefore, Harada does not teach, or even suggest a composition (or absorbent article) comprising the polymer of the present invention (and, in fact, teaches away from the present invention).

In view of at least the foregoing, the claims are not anticipated by Harada. Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection.

Rejections under 35 U.S.C. § 103

To establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings, (2) there must be a reasonable expectation of success, and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP § 2142. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Applicant respectfully submits that the burden of establishing a *prima facie* case of obviousness has not been met by the Examiner in this case. Moreover, even if a *prima facie* case of obviousness was established, it would be rebutted by secondary evidence of nonobviousness.

A. Harada et al. in view of Jones, Sr.

Claims 2 is rejected under U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,150,469 to Harada et al. in view of U.S. Patent No. 3,794,034 to Jones, Sr. In particular, the Examiner asserts that "Harada discloses all aspects of the claimed invention, but remains silent as to the pH range of 3.5 to 6.0" and "Jones discloses an absorbent article having a pH in the range of 3.5 to 6.0."

In view of the foregoing discussion with regard to the novelty rejection, it is apparent that Harada does not disclose all aspects of the claimed invention. In particular, Harada fails to disclose or even suggest the polymer of the presently claimed invention. Moreover, by teaching that "[i]t is preferable that 50 mol %-90 mol % of acidic groups in the crosslinked polyacrylic acid/salt are neutralized," Harada clearly teaches away from the present invention. See col. 6, lines 50-53.

Jones fails to remedy the deficiencies of Harada because it also fails to teach or suggest the claimed polymer. Therefore, the references in combination do not teach or suggest all the elements of the claims, and do not support a *prima facie* case of obviousness.

Moreover, even if a *prima facie* case of obviousness existed, it would be overcome by the unexpected absorbency results attained by the composition of the present invention, as described in the Examples of the present specification, for example (see pages 10-16).

In view of at least the foregoing, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection.

B. Harada et al. in view of Masaki et al.

Claims 10-12 and 14-20 are rejected under U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,150,469 to Harada et al. in view of U.S. Patent No. 5,821,179 to Masaki et al. In particular, the Examiner asserts that "it would therefore be obvious to one of ordinary skill in the art at the time of the invention to produce an absorbent article comprising the superabsorbent composition of Harada with the structure taught by Masaki to reduce gel blocking of the superabsorbent composition." Office Action, page 5.

In view of the foregoing discussion with regard to the novelty rejection, it is apparent that Harada does not disclose composition recited in the claims (and namely the recited polymer), and therefore does not teach or suggest the article comprising that composition. Moreover, by teaching that "[i]t is preferable that 50 mol %-90 mol % of acidic groups in the crosslinked polyacrylic acid/salt are neutralized," Harada clearly teaches away from the present invention. See col. 6, lines 50-53.

Masaki fails to remedy the deficiencies of Harada because it also fails to teach or suggest the polymer recited in the composition (and certainly does not overcome the

teaching away by Harada). Therefore, the references in combination do not teach or suggest all the elements of the claims, and do not support a *prima facie* case of obviousness.

Moreover, even if a *prima facie* case of obviousness existed, it would be overcome by the unexpected absorbency results attained by the article of the present invention, as described in the Examples of the present specification, for example (see pages 10-16).

In view of at least the foregoing, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection.

CONCLUSION

For at least the reasons outlined above, Applicant respectfully submits that the application is in condition for allowance. Favorable reconsideration and allowance of the pending claims is respectfully solicited. Should there be anything further required to place the application in better condition for allowance, Examiner Anderson is invited to contact Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,
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